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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 OLD REPUBLIC INSURANCE
11 COMPANY, a Pennsylvania Corporation,

12 Plaintiff,

13 v.

14 LILYBLAD PETROLEUM INC., et al.,

15 Defendants.
16

CASE NO. C08-5556BHS

ORDER DENYING
DEFENDANT LILYBLAD'S
MOTION TO DISMISS

17 This matter comes before the Court on Defendant Lilyblad's Motion to Dismiss
18 (Dkt. 27). The Court has considered the pleadings filed in support of and in opposition to
19 the motion and the remainder of the file and hereby denies the motion for the reasons
20 stated herein.

21 **I. FACTUAL AND PROCEDURAL BACKGROUND**

22 On September 16, 2008, Plaintiff Old Republic Insurance Company ("Old
23 Republic") filed a complaint against Defendants Lilyblad Petroleum Inc. ("Lilyblad"),
24 Terra Vac Corporation ("Terra Vac"), and the Washington State Department of Ecology
25 ("Department of Ecology"). Dkt. 1. Old Republic seeks an interpleader and an
26 injunction to prevent other actions pursuant to 28 U.S.C §§ 1335 and 2361 and Fed. R.
27 Civ. P. 22 and a declaratory judgment pursuant to 28 U.S.C. § 2201. *Id.*
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1 Old Republic claims that “Lilyblad owned and operated a solvent reprocessing
2 facility on Port of Tacoma Road in Tacoma.” *Id.* ¶ 3.2. In 1995, Lilyblad and the
3 Department of Ecology entered into an Agreed Order requiring Lilyblad to undertake
4 various remediation activities for the Port of Tacoma Road Site. *Id.* ¶ 3.4.

5 Old Republic insured Lilyblad and, in 1997, the parties engaged in a coverage
6 dispute before United States Magistrate Judge J. Kelley Arnold. *See Lilyblad Petroleum,*
7 *Inc. v. U.S. Fire Ins. Co.*, No. C97-5414-JKA (W.D. Wash). On February 3, 2000, Old
8 Republic and Lilyblad entered into a Settlement and Release Agreement. *Id.* ¶¶ 3.1 and
9 3.6. The Settlement and Release Agreement, in pertinent part, stated that “Old Republic
10 agrees to pay, up to its policy limits, for the corrective actions selected for the Port of
11 Tacoma Road Site by the Washington Department of Ecology” *Id.* ¶ 3.6. Moreover,
12 the agreement included mandatory mediation clauses. *Id.*, Exh. 2, ¶¶ 18.1 and 18.2. On
13 July 21, 2000, Judge Arnold entered a statistical termination of the coverage dispute and
14 issued an order that stated, in relevant part, as follows:

15 Counsel should note that this termination is intended solely to remove this
16 matter from the court's docket of acting pending cases in order to alleviate
17 congestion of the court's docket. At such time as the parties deem this
18 litigation in a posture to proceed before the court, they shall file a motion to
reopen and the matter will proceed. The motion to reopen shall be filed in
the above referenced cause number. No new case need be filed nor will
additional filing fees be required.

19 *See Lilyblad*, No. C97-5414-JKA, Dkt. 160.

20 On June 10, 2003, Lilyblad and Terra Vac entered into a Design Build Agreement
21 that called for Terra Vac to perform certain work at the Port of Tacoma Road Site as part
22 of the remediation required by the Agreed Order. *Id.* ¶ 3.8. Old Republic was listed as a
23 Guarantor in the Design Build Agreement between Lilyblad and Terra Vac. *Id.* ¶ 3.9. In
24 February of 2006, the Department of Ecology instructed Lilyblad to discontinue Terra
25 Vac’s operations at the Lilyblad site. *Id.* ¶ 3.11.

26 On May 29, 2007, Terra Vac wrote to Lilyblad and claimed that it was entitled to
27 various additional sums as a result of the termination of its work and the “suspension” of
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1 the Design Build Agreement. *Id.* ¶ 3.13. Old Republic claims that its liability is subject
2 to the limits of its policies, which, after payment of some obligations under the policies,
3 leaves \$756,897 to be distributed. *Id.* ¶ 3.16. On August 28, 2008, Terra Vac demanded
4 the \$756,897 from Old Republic. *Id.* ¶ 3.15.

5 On October 23, 2008, Defendant Lilyblad filed a Motion to Dismiss. Dkt. 27. On
6 November 3, 2008, Old Republic and Defendant Terra Vac filed briefs in opposition to
7 Lilyblad's motion. Dkts. 30 and 31. On November 7, 2008, Lilyblad replied. Dkt. 33.

8 **II. DISCUSSION**


9 Lilybald argues that, by filing this lawsuit, Old Republic violated not only the
10 Settlement and Release Agreement between Lilybald and Old Republic but also Judge
11 Arnold's order of statistical termination. Dkt. 27 at 4-6. Old Republic counters that this
12 interpleader action was instigated by disputes with Terra Vac who is not a party to either
13 the coverage dispute or the Settlement and Release Agreement. Dkt. 30 at 5. The Court
14 agrees. Lilybald has failed to show that this action should be dismissed in its entirety
15 when the claims have arisen from a dispute with Terra Vac. Terra Vac was not a party in
16 the coverage dispute and only became involved with Old Republic and Lilybald after the
17 coverage dispute had been settled. Therefore, the Court denies Lilybald's motion to
18 dismiss this action in its entirety.

19 **III. ORDER**

20 It is hereby

21 **ORDERED** that Defendant Lilyblad's Motion to Dismiss (Dkt. 27) is **DENIED**.

22 DATED this 26th day of November, 2008.

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26 BENJAMIN H. SETTLE
27 United States District Judge
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